

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SEAN RUSSELL FOSTER, ) CASE NO. C07-0847-RSL-MAT  
)  
Petitioner, )  
)  
v. ) REPORT AND RECOMMENDATION  
)  
ROBERT J. PALMQUIST, et al., )  
)  
Respondents. )  
\_\_\_\_\_ )

Petitioner is a federal prisoner who is currently incarcerated at the Federal Detention Center at SeaTac, Washington. He is serving a ten-month sentence following his conviction for possession of a firearm as a person under a restraining order, in violation of 18 U.S.C. § 922(g)(8). (Dkt. #9 at 2). Petitioner has filed a federal habeas petition pursuant to 28 U.S.C. § 2241 (Dkt. #3) in which he challenges the validity of the regulation issued by the federal Bureau of Prisons (“BOP”) which categorically limits the class of prisoners eligible for release to community confinement based on the amount of time the prisoner has left to serve. In *Pankratz v. Palmquist*, Case No. C06-1328-RSL, the District Court found that this regulation, 28 C.F.R. § 570.21 (“the regulation”), which limits the amount of time an inmate may spend in community

01 confinement to 10% of the inmate's sentence, was invalid because it exceeded the authority  
02 granted to the BOP under 18 U.S.C. § 3621(b).

03 Respondents have filed a response (Dkt. #9) in which they adopt the same legal arguments  
04 presented in *Pankratz*. (Dkt. #9 at 2). The Court sees no basis on which to distinguish the present  
05 case from *Pankratz* and, accordingly, recommends granting the same relief afforded in *Pankratz*:  
06 that BOP be directed to review petitioner's case under the factors outlined in 18 U.S.C. § 3621(b),  
07 without regard to the time limits set forth in the regulation. A proposed Order is attached.<sup>1</sup>

08 DATED this 29th day of June, 2007.

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10 Mary Alice Theiler  
11 United States Magistrate Judge  
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19 <sup>1</sup> Because respondents state in their response that they waive any objections to this Report  
20 and Recommendation and also the time period for such objections (Dkt. #9 at 2), the Clerk shall  
21 NOTE this Report and Recommendation for consideration on the day that it is filed. The Court  
22 notes that this waiver should not be deemed a waiver of respondents' right to appeal this Order.  
*See Britt v. Simi Valley Unified Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983), *overruled on other*  
*grounds, United States v. Reyna-Tapia*, 328 F.3d 1114, 1121-22 (9th Cir. 2003) (en banc).